

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
FEBRUARY 20, 2002 Session

JOYCE MARIE HOWELL v. PHILLIP DAVID HOWELL

**Direct Appeal from the Chancery Court for Madison County
No. 51574; The Honorable Joe C. Morris, Chancellor**

No. W2001-01167-COA-R3-CV - Filed August 15, 2002

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which WILLIAM B. ACREE, JR. SP. J., JOINED AND W. FRANK CRAWFORD CONCURRED IN PART AND DISSENTED IN PART.

Don G. Owens, III, Memphis, TN, for Appellant

James F. Butler, Jackson, TN, for Appellee

CONCURRING AND DISSENTING OPINION

I concur in the majority Opinion in all respects except the trial court's forgiveness of the arrearage in *pendente lite* alimony. Appellee took no action to be relieved of his obligation to pay *pendente lite* alimony, if, in fact, he was unable to pay it. He deliberately did not comply with the Order of the trial court setting the alimony *pendente lite* payments; therefore, he should not be relieved of that obligation. If, in fact, he was unable to comply with the Order, he should have filed a petition for modification or to terminate *pendente lite* support payments. His action indicates a deliberate disregard of the Order of the trial court, and there should be no forgiveness of the arrearage.

Therefore, I dissent from that part of the Opinion of the majority affirming the trial court and would reverse that part of the Order and remand for further proceedings as necessary.

W. FRANK CRAWFORD, PRESIDING
JUDGE, W.S.